KHOR SWEE KHIM v. PUBLIC PROSECUTOR; WAN BIN ABDULLAH v. PUBLIC PROSECUTOR.

[C. A. (Mathew, C.J., Wilson and Taylor, JJ.) February 2, 1953]

[K.L. — Criminal Application No. 1 of 1953; Criminal Appeal No. 6 of 1953]

Criminal procedure — Appeal against forfeiture of bond — Proper procedure where there is lack of jurisdiction of Appeal Court.

One of two sureties whose bail were estreated by the High Court appealed against the order and the other appealed by motion for extension of time to appeal. By section 19 of the Courts Ordinance, 1948, no appeal lies where a person has not been convicted and therefore the Appeal Court has no jurisdiction to hear the appeal.

The question was whether the appeal should be rejected and the record expunged without being listed for hearing.

Held: whether or not the Appellate Court has jurisdiction ought to be argued in Court.

Case referred to:—

(1) *R. v. Moona Hussain Maricar* (1936) M.L.J. 36 at p. 37.

APPEAL against forfeiture of bond.

M. S. Mahendran for the applicant.

G. H. Summerfield (Federal Counsel) for the respondent.

Cur. Adv. Vult.

The judgment of the Court was delivered by:—

Taylor, J.: — These two matters were heard together. The prisoner was committed for trial by the Magistrate at Parit Buntar and admitted to bail with two sureties. The bond was in the ordinary form, and on its face it bound the accused to attend the High Court on a specified day and the sureties to secure his attendance on that day.

On the specified day the accused did not appear. The first surety was present but not the second surety. The trial Judge estreated the recognisance of the surety who was present, and adjourned the proceedings against the others for a fortnight. The second surety, having been served with notice, was then called upon to show cause, and his bail was also estreated.

The second surety appealed against the order forfeiting the bond, and the first surety applied by Motion for extension of time to appeal.

There is no general right of appeal. Apart, possibly, from the Royal Prerogative appellate jurisdiction is solely a creation of statute, and it extends only as far as the words of the statute necessarily require. Section 19 of the Courts Ordinance, 1948 provides that the Court of Appeal shall have jurisdiction to hear any appeal by a person convicted by the High Court in its original criminal jurisdiction, subject to certain limitations. The appellant surety had not been convicted and therefore this Court has no jurisdiction to hear his appeal.

We are aware that in some cases in recent years an appeal which appeared to be not within the jurisdiction of this Court was rejected and the record expunged without being listed for hearing. We do not think that this procedure was entirely sound; for instance, there is no appeal where the prisoner has pleaded guilty at the trial but suppose the convicted person were to say: — "True, I pleaded guilty, as appears from the record, but I have since been advised that the charge did not disclose any offence known to the law, and I therefore wish to argue that my plea was a nullity." Manifestly, that is a question which ought to be argued in Court.

We think the true principle was stated by Terrell, J., in *R. v. Moona Mohamed Hussain Maricar*[1].

It is one thing to say that a memorandum of appeal is bad; it is quite a different thing to say that an instrument which is, on its face, a memorandum of appeal in due form, is not a legal memorandum of appeal. We think, therefore, that the proper order in the present case is that the appeal of Wan bin Abdullah be dismissed as incompetent.

There is obviously no point in extending the time for a similar appeal and, therefore, the application of Khor Swee Khim is dismissed.

Appeal and application dismissed.

SAYAMPANATHAN v. MANICKAM CHETTIAR & ANOR.

[C. A. (Murray-Aynsley, C.J., Mathew, C.J. (F.M.) and Whitton, J.) April 21, 1953]

[Singapore — Appeal No. 1 of 1953]

Land laws — Mortgage — Sale of property by mortgagees — Res judicata.

The appellant had many years ago mortgaged certain property to a Chettiar firm, M.R.M.S. Sockalingam Chettiar. In 1930, these mortgagees exercised their powers of sale and sold the property in question to the predecessor in title of the respondents. The proceeds of sale were insufficient to satisfy the claims of the mortgagees, who in Suit No. 1416 of 1931 sued the appellant for the balance owing. The appellant entered an appearance and put in a defence in which he alleged, inter alia, that the sale was collusive. He did not join the present respondents. The mortgagees in reply joined issue. When the case came on for hearing a lawyer who had been representing the appellant obtained his discharge, irregularly according to the then rules. The appellant was absent. The mortgagees made a formal proof of their claim and obtained judgment.

In 1952 the appellant instituted proceedings by Suit No. 1280 claiming for a declaration that the indentures of conveyances, the subject matter of the 1931 Suit, were fraudulent and void as against the appellant in so far as they purported to convey the land in dispute.

The question of **res judicata** arose out of the 1931 proceedings.

Held: (1) estoppel is limited to parties to the proceedings and their privies in estate; (2) in this case the sale by the mortgagees had been completed before these proceedings and their predecessors in title who owned the land at the time of the proceedings were not parties; (3) the respondents could not raise the question of estoppel either as parties or privies.

Case referred to:—

(1) *Mercantile Investment etc. v. River Plate Trust etc.* (1894) 1 Ch. 578 at p. 594.

CIVIL APPEAL.

C. H. Smith for the appellant.

Philip Hoalim for the respondents.

The judgment of the Court of Appeal was delivered by:—

Murray-Aynsley, C.J.: — This appeal dealt with a question of *res judicata*. The facts were as follows: The present plaintiff, the appellant, had many years ago mortgaged certain property to a Chettiar firm, M. R. M. S. Sockalingam Chettiar. On September 17th, 1930, these mortgagees exercised their powers of sale and sold the property in question to the predecessor in title of the present defendants, the respondents. The proceeds of sale were insufficient to satisfy the claims of the mortgagees, who in Suit No. 1416 of 1931 sued the appellant for the balance owing. The appellant entered an appearance and put in a defence in which he alleged, *inter alia*, that the sale was collusive. He did not join the present respondents. The mortgagees in reply joined issue. When the case came on for hearing a lawyer who had been representing the appellant obtained his discharge, irregularly according to the then rules. The appellant was absent. The mortgagees made a formal proof of their claim and obtained judgment.

In 1952 the appellant began proceedings against the respondents, who are the successors in title of the purchasers in 1931. The question of *res judicata* arises out of the proceedings in 1931. In spite of the course of events at the trial of the 1931 proceedings, that is to say, in spite of the fact that the issues were not decided after hearing evidence on their merits the appellant is undoubtedly bound by those proceedings, but the estoppel is limited to parties to the proceedings and their privies in estate. The present respondents were not parties to the 1931 proceedings. The sale by the mortgagees had been completed before these proceedings and their predecessors in title who owned the land at the time of these proceedings were not parties. So that the respondents cannot raise the question of estoppel either as parties or as privies. If authority is needed it will be found in *Mercantile Investment and General Trust Co. v. River Plate Trust, Loan and Agency Co.*[1], which is exactly in point. For that reason we allowed the appeal with costs.

Appeal allowed.

PUBLIC PROSECUTOR v. ABDUL SAMAD BIN AHMAD & ANOR.

[O. Cr. J. (Briggs, J.) March 6, 1953]

[K. L. — Criminal Application No. 3 of 1953]

Contempt of Court — Publication of article while Police investigation going on — Principle upon which the Court regards publications as contempt — Proper procedure for instituting contempt proceedings.

This was an application by the Public Prosecutor for writs of attachment against the editor, and the printer and publisher of the "Majlis" for contempt of Court. The newspaper had published a report of a motor car accident in which one Muniandy had knocked down a Malay school boy outside his school. The publication alleged that the driver was driving at an illegally high speed, and that he caused the accident by such speed, as shown by the brake marks and position of the car. It also called the attention of the public to the views of the U.M.N.O. Branch Committee relative to the need for traffic control at that Malay school and at all schools with premises abutting on to the public highway. After the publication, a Summons was issued against Muniandy to appear in a Magistrate's Court to answer a charge of negligent driving.

The application was first made by the Public Prosecutor **ex parte** for a rule nisi and certain points of law were discussed. The Court being satisfied that it had jurisdiction to hear the alleged contempt committed ex facie a Subordinate Court in relation to an impending criminal proceeding, granted leave for the application to be served on the respondents.

At the hearing inter partes, the respondents raised the defence that the publication did not amount in law to contempt unless proceedings were "pending". Further, on the facts, it was pointed out that the purpose of the publication was to draw attention to the views of the U.M.N.O. Branch Committee for more traffic controls.

Held: (1) following the general principle laid down by Wills, J. in R. v. Parke[5] and to some extent the special principle in R. v. Davies[10], contempt would be committed where it was known at the time of the publication that police investigation was proceeding and that a prosecution was, at the very least, under consideration, even though no one has been officially accused of the offence; (2) the publication went further than merely calling attention to the need for special traffic controls at schools. It is clear that it was calculated to affect the course of proceedings then imminent.

Cases referred to:—

(1) *Re Straits Times Press Ltd.* (1949) M.L.J. 81.

(2) *R. v. Davies* (1906) 1 K.B. 32.

(3) *R. v. O'Dogherty* (1848) 5 Cox C.C. 348.

(4) *Porter v. R.* (1926) 37 C.L.R. 433.

(5) *R. v. Parke* (1903) 2 K.B. 432.